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2022 AUG 18 AM 10:42  
IDAHO PUBLIC  
UTILITIES COMMISSION

Attorney for the Idaho Conservation League

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF IDAHO</b>	)	<b>CASE NO. IPC-E-22-13</b>
<b>POWER COMPANY'S</b>	)	
<b>APPLICATION FOR A</b>	)	<b>IDAHO CONSERVATION LEAGUE</b>
<b>CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY</b>	)	<b>COMMENT</b>
<b>TO ACQUIRE RESOURCES TO BE</b>	)	
<b>ONLINE BY 2023 TO SECURE</b>	)	
<b>ADEQUATE AND RELIABLE</b>	)	
<b>SERVICE TO ITS CUSTOMERS</b>	)	

The Idaho Conservation League (ICL) submits the following formal comments regarding Idaho Power's application for a certificate of public convenience and necessity (CPCN) to obtain new storage resources. ICL is excited to see Idaho Power invest more in renewables and storage, but we are concerned that Idaho Power is over-eager to fill capacity deficits with Company-owned resources and is thus ignoring the potential of third-party ownership, including customer-owned generation, to provide needed capacity. We ask that the Commission reject Idaho Power's application until the utility can show that: 1) It considered non-utility owned resources during the bidding process for this resource, and 2) It has done a full analysis of the potential for customer generation to fulfill at least part of the current capacity deficits.

**I. Idaho Power Unreasonably Ignored all Non-Utility-Owned Resources in its Resource Procurement Process.**

Idaho Power's procurement process required bidders to include a build-transfer agreement (BTA), potentially excluding bids that may have been less costly and more beneficial for customers.<sup>1</sup> Idaho Power, like all regulated utilities, earns profit by building and owning infrastructure. Idaho Power's requirement that new resources include a BTA which will transfer ownership back to the utility is neither "fair" nor "competitive," but rather is rooted in profit-seeking motives.<sup>2</sup> As a result of Idaho Power's narrow procurement process which prevented third-party ownership, customers and stakeholders have no idea whether the utility's selected bid is the "least-cost, least risk procurement" or whether a developer who did not wish to offer a BTA could have provided a better deal to the utility and its customers.<sup>3</sup> Indeed, Idaho Power all but admits that the present procurement process does not necessarily serve the public interest.<sup>4</sup>

In its Application, the utility provides a multitude of reasons for why it required a BTA in bids for this resource, but it presents little justification for these reasons. Regulated utilities across the country frequently engage in PPAs. All of the risks that Idaho Power described in its Application and testimony can be dealt with in contract, a fact noted by the utility itself.<sup>5</sup> In fact, the Oregon Public Utilities Commission recently approved PacifiCorp's sample tolling

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<sup>1</sup> *Application*, Case No. IPC-E-22-13, 9 (Apr. 29, 2022).

<sup>2</sup> *Application* at 8.

<sup>3</sup> *Id.*

<sup>4</sup> *Direct Testimony of Timothy Tatum*, Case No. IPC-E-22-13, 18 (Apr. 29, 2022) ("Going forward, the Company recognizes that a competitive procurement process that *appropriately* considers the full range of costs and benefits of differing ownership structures *may ultimately best serve the public interest*" (emphasis added)).

<sup>5</sup> *Application* at 10 ("[T]hese issues could conceivably be addressed through an agreement with a third-party provider").

agreement for third-party ownership of storage resources.<sup>6</sup> Idaho Power could have used this agreement as a model to create its own contracts for PPAs.

Idaho Power's main justification for its inability to contract with a third-party owner is the exigency created by the capacity deficit, but it is unclear why Idaho Power could not have taken earlier steps to mitigate this risk. Parties and stakeholders have been urging Idaho Power to develop competitive procurement processes for years.<sup>7</sup> Idaho Power could have spent any of the last decade working with stakeholders to develop new procurement protocols, especially as it became increasingly clear that the utility would lose capacity at Bridger and have increased demand due to population growth. Instead, the utility continues to push the proverbial can down the road in a less than subtle attempt to ensure that it does not have to engage in competitive procurement processes.

ICL fears that granting Idaho Power this CPCN without requiring it to engage in a full and unbiased bidding process will set additional precedent for the utility to continue to use unfair procurement processes and avoid all third-party ownership of utility resources. Although Idaho Power claims that it is "committed to working with Commission Staff and other interested parties to explore competitive procurement practices that result in a comprehensive and fair evaluation of price and non-price attributes of various resource ownership structures," this commitment is not a guarantee, and Idaho Power has repeatedly shown itself to be hostile to any

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<sup>6</sup> Oregon Public Service Commission, *Order No. 22-130*, Case No. UM 2193, <https://apps.puc.state.or.us/orders/2022ords/22-130.pdf>

<sup>7</sup> *Renewed Motion to Stay of the Industrial Customers of Idaho Power*, IPC-E-09-03, 6 (July 31, 2009), <https://puc.idaho.gov/Fileroom/PublicFiles/ELEC/IPC/IPCE0903/Intervenor/ICIP/20090731Joint%20Renewed%20Motion%20to%20Stay.pdf> (stating that "granting a CPCN to a company-owned resource chosen from the Company's very flawed request for proposals (RFP) process will send a negative signal to the development community, to wit: Idaho is not a place where independent energy providers should put their time and effort").



non-utility ownership structures.<sup>8</sup> This hostility leads ICL to believe that the utility will continue to evade true competitive procurement processes. Further, fair procurement processes that select the most cost-effective and reliable resources are not an elective program that Idaho Power may choose to “explore,” but rather an obligation embedded in the utility’s duty to provide “just and reasonable” service.<sup>9</sup> ICL asks that the Commission hold Idaho Power accountable and require it to engage in a fair procurement process for the 120 MW of storage so that Idaho Power cannot rely on this decision in the future as justification to use biased bidding processes once again.

## **II. Idaho Power’s Procurement Process Unreasonably Ignored Customer-Owned Generation as a Potential Resource to Meet the 2023 Capacity Deficit.**

In determining which resource would best meet the 2023 capacity deficit, Idaho Power assessed utility-owned peak capacity resources, demand response programs, pricing programs, and short-term market solutions, but failed to consider customer-owned generation.<sup>10</sup> Customer-owned generation has been shown to provide capacity and reliability benefits to utilities, not to mention a multitude of rate-based and non-rate-based benefits to customers.<sup>11</sup>

Idaho Power likely assumed that because customer generation accounts for a tiny percentage of the utility’s generation capacity, this resource could not meet the utility’s short-term capacity needs, and it was thus not worthwhile to examine its potential to fill future

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<sup>8</sup> *Application* at 3 (stating that “there is benefit to both the Company and its customers when resource acquisitions, particularly dispatchable resources, are Company-owned as Idaho Power must maintain its financial health to remain a viable, going-concern, regulated entity” even though the utility is statutorily guaranteed to make back any and all of its costs with or without utility ownership of generation resources); *See also Application*, IPC-E-21-41, 5 (Dec. 3, 2021) (withdrawn by Idaho Power Company) (Idaho Power asked for relief from the Oregon resource procurement rules in order to meet identified capacity deficits in 2023, 2024, and 2025, providing a strong implication that the utility has little intention of engaging in fair and competitive procurement processes for capacity deficits even beyond the 2023 deficit identified in the ongoing storage CPCN proceeding.)

<sup>9</sup> Idaho Code § 61-302.

<sup>10</sup> Direct Testimony of Jared Ellsworth, IPC-E-22-13, 17-18 (Apr. 29, 2022).

<sup>11</sup> *See Comments of the Idaho Conservation League*, IPC-E-21-40 (May 12, 2022).

capacity. Of course, ICL agrees that it is highly improbable that customers would acquire 120 MW of generation in time to fill the 2023 capacity deficit. However, Idaho Power's refusal to even analyze the potential of this resource means that customer generation will never appear valuable to the utility, and the resource will be unable to grow. For example, the utility's use of expanded demand response programs and new solar/storage resources to fill the near-term capacity deficit likely reduced the value of the avoided generation capacity cost in Idaho Power's VODER Study which will lower the overall suggested export credit rate (ECR) in the Study. A lower ECR means that fewer people will be able to afford rooftop or community solar, and this resource will continue to be underutilized in Idaho.

ICL requests that the Commission require the utility to at least analyze the potential of new customer generation, including community-based customer generation, for both solar and storage. ICL also requests that the utility include more robust analyses of the potential of customer generation to fulfill future capacity needs.

Respectfully submitted this 18th day of August, 2022.

*/s/ Emma E. Sperry*

Emma E. Sperry

Attorney for the Idaho Conservation League

## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2022, I delivered true and correct copies of the foregoing COMMENT to the following persons via the method of service noted:

/s/ Emma E. Sperry  
Emma E. Sperry

Electronic mail only (See Order 35058):

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